



February 6, 2002

Mr. Ric Gonzalez  
Assistant City Attorney  
City of Lewisville  
P.O. Box 299002  
Lewisville, Texas 75029-9002

OR2002-0561

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158418.

The City of Lewisville (the "city") received a request for "[a]ll documents, including but not limited to memos, reports, etc., regarding an internal investigation of Sgt. Claude S. Pope as a result of an incident in September 2001 with the Denton police at Pope's residence." The requestor additionally seeks "[a]ll reports, documents, etc., released from the Denton police department to the Lewisville Police dept. in regards to this incident." You claim that, as the investigation at issue is not complete, the requested information was not in existence on the date the city received the request, and therefore, the requested information need not be released under the Public Information Act (the "Act"). We have considered your argument and reviewed the submitted information.

We first note that you correctly assert that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). However, in this instance, we disagree with your claim that the requestor in this case seeks only the completed internal affairs investigation report, which you indicate does not exist since the investigation was not yet completed on the date of the records request. Upon review of the submitted "Information Request" from the requestor to the city, we can find nothing that indicates that the requestor sought to limit her request to the completed report pertaining to the internal affairs investigation. Rather, she seeks "all documents" regarding such an investigation.

Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." It is clear

that the requested information relates to the transaction of official city business. Therefore, any information pertaining to the internal affairs investigation at issue, in existence on the date the city received the request, or any information released from the Denton Police Department to the Lewisville Police Department pertaining to the incident that gave rise to this investigation, is subject to disclosure under the Act.

In order to withhold any such responsive information from the requestor, the city was required to submit arguments to this office raising exceptions under the Act for withholding the responsive information, as well as submit a copy of the requested information or representative samples thereof. Gov't Code § 552.301(b), (e)(1)(A), (D). As you did not raise exceptions for withholding the information, nor submit the information or representative samples thereof to this office for review, the requested information is presumed to be public, and must be released unless the city presents a compelling reason for withholding the information. Gov't Code § 552.302. Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. Open Records Decision No. 630 at 3 (1994). You have presented no such compelling reasons. Rather, you rely on section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Section 552.022(a)(1) of the Government Code makes a completed report, audit, evaluation, or investigation expressly public, and therefore not subject to discretionary exceptions to disclosure, other than section 552.108. Section 552.022(a)(1) *does not* provide that unless a report, audit, evaluation, or investigation is completed, information pertaining to such reports, audits, evaluations, or investigations is not required to be released under the Act. Therefore, the requested information may not be withheld under section 552.022. Because you have not provided a compelling reason for withholding the requested information, any such information in existence on the date the city received the request must be released to the requestor at this time. *See* Gov't Code § 552.302. We caution that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/sdk

Ref: ID# 158418

Enc. Submitted documents

c: Ms. Leah Shafer  
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(w/o enclosures)